providers and does not address the inherent problem in the industry of the lack of a relationship between cost and prices. They further assert that the Federal Act prohibits cross subsidization of competitive services by non-competitive services by mandating the state to establish cost allocation rules, accounting safeguards and guidelines to insure services in the universal service definition bear no more than a reasonable share of joint and common costs of facilities to provide those services. Section 254(k). These parties contend the historic imbalance between price and cost needs to be corrected with the advent of competition and implicit subsidies must be removed. Failure to examine the relevant cost of providing local service makes it impossible to determine implicit subsidies and has resulted in a universal service mechanism which deprives the ALECs of a source from which to draw a subsidy to provide competitive local exchange service. AT&T asserts that"there was no dispute regarding the fact that prices for local service are below cost in certain areas of the state. . ." (p.4) CURB asserts "there is no significant or overall subsidy of basic local residential rates[.] " and that SWBT's incremental costs of residential basic local service were overstated by some material amount. (p.6) AT&T and K.C. Fiber assert that failure to examine relevant cost of providing local service has led to an improperly sized KUSF, depriving the ALECs of a source from which to draw a subsidy to provide competitive local exchange service. K.S.A. 1996 Supp. 66-2008(d) directs the Commission to review the costs of providing local service.

20. CURB has cited to cost study evidence presented by it. Cost study evidence was also presented by SWBT and to some extent by Staff. SWBT's

evidence shows that the company's total local exchange cost is $ 506 million. Cooper Tr. 2151-9. If this amount is spread on a per line basis, it shows that each line would need to recover $34.50 per month to cover its local exchange cost. In order to constitute a subsidy the local service rate, including the EUCL and the CCL for inter and intrastate access would need to exceed $34.50. There is no evidence in the record that these charges do so. General knowledge leads the Commission to believe they do not. The Commission acknowledges this calculation averages costs and revenues and does not reflect cost/price relationship in discrete areas. Neither the Federal Act nor the State Act contain requirements that the Commission undertake a restructuring of local service rates.

21. Although AT&T, CURB and K.C. Fiber complain in general that the KUSF is not based on cost and does not follow federal law, they do not cite to evidence indicating the decision lacks a basis in the record. The burden is on the party seeking reconsideration to cite to evidence. K.A.R. 82-1-235. The Commission is not required to search the record for evidence supporting reconsideration.

22. With respect to Section 254(k) of the Federal Act, the Commission has established accounting safeguards to preclude cross subsidization by implementation of the price cap plan, the competitive services subbasket and the imputation requirement. The access charge reduction operates to remove implicit subsidies.

23. Sections 254 (e) and (f) of the Federal Act generally require compliance with FCC guidelines for the federal universal service mechanism, an order on which will not be issued until May. They allow adoption of state mechanisms that

are not inconsistent with the FCC rules and require that state mechanisms not rely on or burden the federal mechanism. The Commission will need to evaluate the KUSF for consistency with the FCC order, but obviously cannot make the necessary determinations until the FCC has acted. Sections 251 and 252 have also been cited. They address cost based determinations of interconnection issues. They do not require the Commission to restructure local service prices.

24. K.S.A. 1996 Supp. 66-2008(d) requires the Commission to review the KUSF "periodically" to determine if the costs to provide local service justify modification of the KUSF. However, K.S.A. 1996 Supp. 66-2008(a) requires that incumbent LECs be revenue neutral. The initial amount of the KUSF must be determined in the manner set out in the order. The evidence supports the decision and the order is affirmed.

25. KUSF Distributions: AT&T asserts the Order confuses access rate rebalancing and the KUSF. AT&T states under K.S.A. 1996 Supp. 66-2005(c), only access rate rebalancing is required to be done in a revenue neutral manner. AT&T also comments that K.S.A. 1996 Supp. 66-2008(c) requires that KUSF contributions be competitively neutral. AT&T argues that K.S.A. 1996 Supp. 66-2008(c) was not intended as a revenue neutral, make-whole provision for the LECs.

26. The Commission has ordered no rate rebalancing although it is authorized by K.S.A. 1996 Supp. 66-2005(c). K.S.A. 1996 Supp. 66-2008(c) addresses distributions from the KUSF, not contributions to the fund. The Commission agrees that both distributions and contributions to the KUSF must occur in a

competitively neutral manner. The Commission finds that the order establishes a competitively neutral distribution and contribution methodology. However, K.S.A. 1996 Supp. 66-2008(a) requires the initial KUSF amount to be comprised of revenues lost through access charge and toll reductions. The Commission denies reconsideration of this issue.

27. Funding Methodology: K.C. Fiber and CMT assert the KUSF funding methodology is discriminatory and a barrier to entry. K.C. Fiber states all companies providing local exchange service in competition with incumbent LECs must contribute 14.1% to the KUSF while the LECs do not. K.C. Fiber also states the local service wholesale discount to ALECs would be based on the local rate increased by the KUSF assessment pass-through.

28. The Commission recognizes that confusion regarding the KUSF funding methodology exists and wishes to clarify the methodology set out in its Order. All providers of intrastate telecommunications services, including incumbent LECs, will be subject to the same KUSF assessment. K.S.A. 1996 Supp. 66-2008(b) authorizes all contributors to pass through the assessment to their customers. No company is required to pass the assessment through. However, if a LEC decides to pass the assessment through to its customers, the Commission established a method the incumbent LECs must use for doing so. Even if a company passes the assessment through in the form of higher prices for local service, the assessment does not constitute a local service rate increase. It remains a KUSF assessment, which may vary from year to year. Any wholesale discounts from local

service prices will be based on the local service price without the KUSF assessment. As stated in the order, the Commission did not order rate rebalancing. Thus, local service rates remain the same as before the assessment, regardless of the manner in which the assessment is passed through. Independent LECs that increase their local rates to reach statewide average rural rates as authorized by K.S.A. 1996 Supp. 66-2005(d) will of course include any such increases since they are an integral part of the local rate and not a separate assessment. The Commission finds the funding mechanism is not a barrier to entry because it is funded through the same assessment on all contributors and the wholesale rate is not affected by the assessment. Therefore, the Commission denies reconsideration of this issue.

29. Subsidy Amount: AT&T asserts $36.88 is meaningless for any loop in SWBT territory because SWBT receives no federal universal service funding support. AT&T also states no evidence exists which indicates the $36.88 will cover the cost of an unbundled loop. Sprint seeks clarification of how the $36.88 and recovery from customers will impact the incumbent LEC's total KUSF support. K.C. Fiber asserts that limiting ALEC recovery to $36.88 violates K.S.A. 1996 Supp. 66-2008(c).

30. K.S.A. 1996 Supp. 66-2008(a) requires that incumbent LECs remain revenue neutral. The $36.88 loop cost support payment will help insure the independent LECs remain revenue neutral. The $36.88 was determined to be the loop cost needed to be funded by the KUSF by considering the average loop cost and federal universal service funding support. Parties expressed concern regarding

KUSF support for rural areas when the LEC in not eligible for universal service funding support. Several small incumbent LECs do not receive federal universal service funding support because their service territory is not "high cost." For SWBT, the high rural area cost per loop has been averaged with the many loops in the metropolitan areas resulting in ineligibility for federal universal service funding support. The Commission has established a generic docket 97-SCCC-149-GIT to investigate cost studies. In the cost study docket, cost of facilities will be determined in order to set prices for interconnection. The loop cost for different density zones will be determined. Staff recommended that the level of loop cost support in rural areas be incorporated into the generic cost study docket. The Commission, therefore, denies reconsideration of this issue and incorporates consideration of loop cost support in the generic cost study docket.

31. In its Comments on Petitions for Reconsideration SWBT raised the issue of inclusion of the KUSF assessment in revenue determinations for municipal fee assessments. The Commission directs companies using the Uniform System of Accounts, Part 32, to book the KUSF assessment revenues in Account No. 5264. Consistent with other determinations in this order the KUSF assessment is not a part of the rate for local service.

C. KANSAS LIFELINE PROGRAM

32. CURB asserts the Lifeline Program is inadequate in light of rate increases LECs may charge. The Commission disagrees. The $3.50 discount exceeds increases customers will bear if companies decide to pass through KUSF

assessments. Furthermore, the Lifeline Program is the first of its kind in Kansas and will allow customers to become eligible for a federal lifeline matching amount that will double support payments customers receive. If the FCC significantly alters the federal program, the Commission may revisit the issue. The Order is affirmed with respect to this issue.

D. RURAL GUIDELINES

33. Columbus claims the Commission failed to "follow the mandate of the Kansas Act in establishing rural guidelines." The Commission adopted rural entry guidelines which enumerated the statutory requirements for rural entry. (Order ¶ 175, Attachment B). The State Act requires the Commission to adopt guidelines to ensure all telecommunications carriers and local exchange carriers preserve and enhance universal service. The Commission may issue a certificate to provide service in a rural telephone company exchange area if the application meets the guidelines issued pursuant to K.S.A. 1996 Supp. 66-2004(b) and other relevant criteria. K.S.A. 1996 Supp. 66-2004(d). Any decisions regarding rural entry must be made on a case-by-case basis.

34. Columbus proposes the following guidelines be considered when an applicant requests authority to provide service in a rural telephone service area:

- proposed competitive entry would not negatively effect preserving and advancing universal service, at reasonable and affordable rates and with high service quality, in the incumbent service area;
- competition pursuant to the application would not negatively effect the continued existence of a viable carrier of last resort, capable of providing high quality, affordable required telecommunications services to anyone in the service area on request;

- the service area of the incumbent rural telephone company is capable of sustaining more than one telecommunications service provider;

- the new entrant into a rural telephone company service area will provide, operate and maintain high capacity facilities and services to schools, medical facilities, and libraries;

- the new entrant should satisfy the Commission that it will not violate the intent of the law and will provide service throughout the service area of the rural telephone company;

- accommodating multiple telecommunications service providers in the rural telephone company service area must be technically feasible; and

- the economic burden of implementing measures necessary to effect these technical requirements must not be excessive or unreasonable.

35. Columbus submits that the guidelines must be established by *the applicant* before a company could be certificated to offer service in a rural telephone company's service area. It appears Columbus intends that the applicant bear the burden of proof. The Federal and State Acts state the Commission must make a determination that the request is not unduly economically burdensome, is technically feasible and preserves and enhances universal service (Section 254 of the Federal Act). The burden of proof does not appear to be assigned to either party.

36. The Commission finds that the guidelines proposed by Columbus shall be adopted to the extent such guidelines are not preempted by Federal law and are consistent with State law. Consistent with Federal and State law, the prefatory language included by Columbus placing the burden of proof on the applicant is not incorporated into the Commission guidelines. Columbus' petition for

reconsideration is granted in part, to the extent that the proposed rural entry guidelines are adopted as modified herein.

E. CELLULAR CONCERNS

37. Notice: CMT alleges it did not receive adequate notice of these proceedings. CMT concedes that everyone is presumed to know the law, but challenges notice regarding the Commission proceeding.

38. K.S.A. 1996 Supp. 66-2002(h) and 66-2008(b) state the Commission must establish the Kansas universal service fund on or before January 1, 1997. K.S.A. 1996 Supp. 66-2008(b) also states the Commission "shall require every telecommunications carrier, telecommunications public utility and wireless telecommunications service provider that provides intrastate telecommunications services to contribute to the KUSF. . . " H.B. 2728 put the wireless service providers on notice that a proceeding would be conducted before the Commission and completed prior to January 1, 1997.

39. Notice of the hearing was published in newspapers of general circulation throughout Kansas. All telephone companies were required to provide notice in the form of billing inserts to all customers. (Order ¶ 99) The published notice and the billing inserts stated that "[a]ll companies providing any form of telecommunications service in the state will pay into [the universal service] fund." Additionally, the notice stated the time and place of the technical hearing.

40. In addition, Staff, in early July, 1996, mailed a request to all cellular carriers known by Staff to be providing service in the state of Kansas. The request

was titled "Assessment for the Universal Service Fund" and directed the companies to provide information as to revenues for services provided to Kansas customers. (Lammers, Tr. 2981-2982)

41. The Commission found at the hearing that notice was proper and affirmed the bench ruling in the Order. (Order ¶ 102) The Commission finds that notice is proper and affirms the Order.

42. Federal Preemption: CMT, Sprint Spectrum and Mountain Solutions argue that the State is preempted by Federal Law from requiring wireless providers to contribute to Universal Service. K.S.A. 66-104a(c) exempts wireless providers from jurisdiction, regulation, supervision and control of the Commission. However, K.S.A. 1996 Supp. 66-2008(b) requires every telecommunications carrier, telecommunications public utility and wireless telecommunications service provider that provides intrastate telecommunications services to contribute to the KUSF on an equitable and nondiscriminatory basis.

43. Section 152(b) of the Federal Act states that except for section 332 (inter alia) nothing in the Federal act gives the FCC jurisdiction over charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate service of wireless carriers.

44. Section 254(f) permits states to establish universal service regulations and requires that all telecommunications carriers contribute to the universal service fund, in an equitable and nondiscriminatory manner. Telecommunications carrier

is a defined term (Section 3(44)) and includes any provider of telecommunications services except aggregators.

45. Section 332(c)(3)(A) provides that, notwithstanding section 152(b), states cannot regulate rates charged by wireless carriers. However, that section does not prohibit states from regulating other terms or conditions of mobile service.

46. The Joint Board stated in its universal service recommendation to the FCC that several CMRS commenters argued that CMRS providers should be exempt from state universal service funds, pursuant to Section 332(c)(3). The Joint Board found that section 332(c)(3) does not preclude states from requiring CMRS providers to contribute to state support mechanisms. The Joint Board noted that 254(f) requires all contributions be equitable and nondiscriminatory.

47. CMT, Sprint Spectrum, and Mountain Solutions, Inc. cited Metro Mobile CTS of Fairfield County, Inc., et. al. v. Conn. Dept. of Public Utility Control, Case No. CV-95-0051275s (December 9, 1996) to support the argument that states are preempted from assessing wireless providers for universal service. The Connecticut Department of Public Utility Control (DPUC) argued that assessments for universal service are allowed by the language "other terms and conditions of mobile service" which the states may regulate, and are not requirements imposed to ensure universal service. The Connecticut Court found that states were preempted from assessing wireless providers for universal service. The Court interpreted section 332(c)(3)(A) as permitting states to assess wireless providers only when there is a finding that wireless services are a substitute for landline service. The Court also

voided the assessment on the grounds that the statute delegating authority to the DPUC violated the separation of powers and due process clauses of the Connecticut Constitution.

48. The Kansas Constitution differs from the Connecticut Constitutional provisions. Further, the Kansas statute differs from the Connecticut statute regarding contributions to the state universal service fund.

49. Section 254(f) specifically provides that states may require all telecommunications carriers (definition appears to include wireless providers) to contribute to state universal service funds. Section 254(f) further provides that states may establish additional definitions and standards as long as they do not rely on or burden Federal universal support mechanisms.

50. Whenever possible, statutes should be interpreted so as to be consistent. Staff believes that in order to read Sections 254(f) and 332(c)(3) as consistent, "requirements . . . necessary to ensure universal . . . service" in Section 332(c)(3)- must mean something other than the contribution to preserve and advance universal service as set out in Section 254(f). The State Act imposes numerous other requirements necessary to ensure universal service on LECs. It does not impose those requirements on wireless companies.

51. The Connecticut state court ruling is not controlling as to decisions of this Commission. The Commission finds that the State Act requires that every telecommunications carrier, telecommunications public utility and <u>wireless telecommunications</u> service provider that provides intrastate telecommunications

services contribute to the KUSF. K.S.A. 1996 Supp. 66-2008(b) Further, the Commission finds that K.S.A. 1996 Supp. 66-2001 et. seq. is not preempted by Federal law. Therefore, the Commission denies reconsideration of this issue.

F. CURB SUPPLEMENTAL ISSUES

52. CURB requested reconsideration of sixteen additional issues but provided no support nor citation to the record in its request. K.S.A. 77-529 states "Any party . . . may file a petition for reconsideration with the agency head, stating the specific grounds upon which relief is requested." CURB's request for reconsideration did not state with sufficient specificity the grounds upon which it requests reconsideration. Therefore, the Commission denies reconsideration of these issues.

F. CLARIFICATION ISSUES

53. Sprint requested clarification of the subsidy amount - whether the $36.88 amount is a monthly or yearly figure. The $36.88 amount is a yearly figure, per residential loop and single line business line.

54. Sprint and Columbus requested clarification of the statement "up to" $36.88 at ¶ 124 of the Order. If a LEC's access charge reduction amounts to less than $36.88 per line, the LEC will only receive the amount necessary to remain revenue neutral. No LEC will receive more than $36.88.

55. Columbus requested clarification of how rural companies will recover contributions to the KUSF referring to a possible "phasing in" of recovery of

replacement revenue from rural customers. Recovery from customers will. be determined by each company. Staff is available for consultation.

56. Columbus requested clarification of which revenues will be subject to the 14.1% assessment for LECs. Net intrastate retail revenues from regulated services are subject to the assessment. Attachment A to this Order provides further definition of revenues subject to assessment.

57. Columbus asked whether customers' payments for recovery of the KUSF contributions are subject to the 14.1% KUSF assessment. Yes, KUSF flow-through amounts are considered retail revenue and are included in the base amount for determination of the amount payable to the KUSF.

58. Columbus requested clarification on coin telephone and other miscellaneous charges. These charges only apply to SWBT and United and will have no impact on what independent LECs receive from the fund. The coin telephone and miscellaneous charges affect the manner in which the KUSF assessment is flowed through to customers by SWBT and United but have no impact on the amount the independent LECs will receive from the fund.

59. Columbus asked for clarification of the statement "must offer to provide service to all customers in the rural telephone company study area as defined by the FCC." Section 214(e)(l)(A) & (B) of the Telecommunications Act of 1996 states: "A common carrier designated as an eligible telecommunications carrier . . . shall be eligible to receive universal service support in accordance with section 254 and shall . . . (A) <u>offer</u> the services that are supported by Federal universal

service support mechanisms under section 254(c), . . . and (B) advertise the availability of such services and the charges therefor using media of general distribution." What constitutes "offer" may become an issue in rural entry proceedings.

60. Columbus stated imposition of new charges on rural telecommunications customers is inequitable. Only customers placing the highest number of calls will benefit by access rate reductions. Only those who obtain benefits should bear the cost. K.S.A. 1996 Supp. 66-2008(b) states: "[t]he commission shall require every telecommunications carrier, telecommunications public utility and wireless telecommunications service provider that provides intrastate telecommunications services to contribute to the KUSF on an equitable and nondiscriminatory basis. Any telecommunications carrier, telecommunications public utility or wireless telecommunications service provider which contributes to the KUSF <u>may</u> collect from customers an amount equal to such carrier's, utility's or provider's contribution." The Commission notes that customers may benefit from access to long distance service even if they do not place many long distance calls.

61. Columbus requested clarification of the differences between a "rural telephone company serving area" and a "rural area." The Commission defines rural telephone company serving area and area qualifying for universal support similarly. Rural telephone serving area is defined in K.S.A. 1996 Supp. 66-1,189(k) as "(1) In the case of a rural telephone company, operating area or service area means such company's study area or areas as approved by the federal

communications commission; (2) in the case of a local exchange carrier, other than a rural telephone company, operating area or service area means such carrier's local exchange service area or areas as approved by the commission."

62. Columbus asked for clarification on which issues of the April 4, 1996 order stand as originally ordered. Section II (A) (9 & 10) Kansas Universal Service Fund; (C) (19, 20, 21) Items to be Supported; (E) (26) Promotion of Universal Service and Telephone Subscribership and (E) (27) Statewide Average Toll Rates; (F) (28) Definition of Basic Service.

63. Columbus requested the Commission define the term ALEC, explain under which regulatory regime ALECs will provide service, and whether KUSF support would be available for facilities-based ALECs only. An ALEC is a telecommunications carrier certified to provide local service after January 1, 1996. According to K.S.A. 1996 Supp. 66-2005(v), telecommunications carriers are exempt from price regulation. They will be subject to quality of service requirements. KUSF support will be available for facilities-based ALECs. KUSF support for ALECs providing service through unbundled elements (UNES) will be determined based on the method for pricing UNES. If the price is cost based, the LEC has fully recovered its cost and support should go to the ALEC. Final determination of these issues is best left until the FCC issues its universal service order.

64. Columbus requested clarification on supplemental funding. Any company may request supplemental funding for additional lines. Supplemental

funding through an expedited rate proceeding or a general rate case is reserved for rate of return regulated companies. K.S.A. 1996 Supp. 66-2008(e) and (f).

65. Columbus and AT&T requested clarification of the Stipulation. The stipulation is approved. The KUSF assessment for LECs will be made on net intrastate retail revenues for regulated services. KUSF assessment will be determined on an annual basis. As independent LECs raise their rates to the statewide average, their revenue reports will incorporate those increases. Incumbent LECs are subject to the same assessment percentage as all other carriers. The Commission's modification of the Stipulation to "not reduce the amount of funding for the KUSF" refers to paragraph 4 of the Stipulation. Paragraph 4 indicates that a movement to statewide average local rates is credited toward a LEC's assessment amount. When this credit occurs, the overall KUSF assessment amount is reduced. The provisions of the Stipulation can still be carried out and rate shock avoided by determining the full amount due the KUSF and collecting it from all the parties to the Stipulation.

66. AT&T asked for clarification on portability of the subsidy amount. The KUSF amount is paid on a per line basis. As a carrier reports additional lines to the KUSF administrator for supplemental funding, the line count will by necessity net gains and losses in lines. If a carrier experiences a declining line count there is no requirement to report. A requirement to report a declining line count may raise the stranded investment issue and whether or not it should be compensated. The subsidy amount cannot be said to "follow" either the customer or the carrier but is

determined on the basis of number of lines. At least initially the Act requires revenue neutrality. K.S.A. 1996 Supp. 66-2008(a). On a going forward basis, K.S.A. 1996 Supp. 66-2008(d) requires the Commission to "review the KUSF to determine if the costs . . . to provide local service justify modification of the KUSF."

67. AT&T requested that the Commission define the term "exchange." Exchange is generally defined as the incumbent local exchange company's local calling area (excluding EAS) as defined by the territory legal descriptions approved by the Commission. In the context of paragraphs 140-149 of the December 27, 1996 Order the following definition applies: a small geographic area such as a wire center or zone within a metropolitan exchange. It does not include all the wire centers or zones within a metropolitan exchange. This limitation is designed to allow the price cap regulated LEC pricing flexibility within a competitive wire center of a metropolitan exchange without allowing it the ability to inappropriately recover potential competitive losses through increased rates in those other wire centers in the metropolitan exchange where customers do not yet have access to the competitive services available from alternative providers. When an entire exchange (as per the general definition) is declared competitive, all the wire centers and zones within the exchange boundaries will be included.

68. SWBT requested the Commission clarify that the sentence in paragraph 151 regarding price cap index calculation was not intended to alter the statutory scheme regarding price cap plans. Paragraph 151 regarding price cap index calculation was not intended to alter the statutory scheme regarding price cap plans.

69. Any issue not addressed specifically in this ordered is affirmed.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

The Petitions for Reconsideration of the Commission's December 27, 1996 Order are hereby granted in part and denied in part and the Order is clarified as set forth above.

The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

McKee, Chr.; Seltsam, Com.; Wine, Com.

Dated: FEB 03 1997

ORDER MAILED

FEB 03 1997

Executive Director

Judith McConnell
Executive Director

EP/JC/MD

Docket No. 190,490-U Order dated 2/3 1996. ATTACHMENT 1

REVENUES SUBJECT TO KUSF ASSESSMENT

Retail revenues are derived from service to an end user, not to a reseller, or ALEC. Retail revenues exclude revenues from resold services, unbundled local access services, and access for providing long distance service.
A company purchasing a service for resale to an end user will assess the KUSF assessment on revenues collected from its end users. The wholesale company will not include services which it sells to resellers in its retail revenues. Services purchased for internal use and not resold to end users will be considered retail revenues to the wholesale company, which should assess any KUSF assessment on such revenues. They will not be included in the reseller's retail revenues. Revenues from services sold to STS providers are retail revenues and will be reported by the LEC. The STS provider will not report its retail revenue to the KUSF.

Retail revenues include, but are not limited to revenues from the following types of services and charges:

- intrastate local service, intrastate vertical services, intrastate private line service, coin service, directory assistance, directory listings, mobile service billed to end users, special access service billed to end users.
- Long distance service, intercity special access billed to end users.
- Revenues from comparable services billed by wireless providers to Kansas customers, including monthly charges, usage, roaming usage when the tower used is in Kansas, and intrastate long distance charges.
- Miscellaneous charges including: late payment charges, customer fees, nonrecurring and installation.
- KUSF assessments that are flowed through as charges to the customer.

Retail revenues do not include revenues derived from the following types of services and charges:

- Franchise tax pass-on charges.
- Local, state, and federal taxes.
- Interstate long distance, and special access services.
- Federal USF payments.

Additional definitions to determine reportable revenues.

- The local calling area takes precedence over the state and interstate jurisdictions. For LECs revenues derived from calls from Kansas City, KS to Kansas City, MO within the LEC's local calling area are considered local and should be included. For Cellular companies revenues derived from a retail sale involving the use of furnishing of a mobile phone, cellular phone, beeper or other similar service shall be considered to have been consummated at the billing address of the subscriber as it appears in the retailer's records.
- Revenues from long distance and special access services are considered to be intrastate revenues when both parties to the call are within the same state, regardless of the routing or servicing of the call. Thus a Wichita to Topeka call routed through Chicago is an intrastate call.

D

CITIZENS' UTILITY RATEPAYER BOARD, Appellant,
v.
The STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, Appellee.
MULTIMEDIA HYPERION TELECOMMUNICATIONS and Kansas City Fiber Network L.P., Appellants,
v.
The STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, Appellee.
CMT PARTNERS, TOPEKA CELLULAR TELEPHONE COMPANY, INC., and Airtouch Cellular Of Kansas, Inc., Appellants,
v.
The STATE CORPORATION COMMISSION OF THE STATE OF KANSAS, Appellee.

Nos. 78548, 78822, 78823 and 78834.

Court of Appeals of Kansas.

Aug. 8, 1997.

Review Granted Oct. 1, 1997.

Citizens' Utility Ratepayer Board (CURB) appealed Kansas Corporation Commission (KCC) orders implementing Kansas Telecommunications Act. Telecommunications services providers appealed Commission orders to the District Court, Shawnee County. Following transfer of providers' appeal and consolidation of appeals, the Court of Appeals, Knudson, J., held that: (1) Act provision mandating that Commission require intrastate telecommunications services providers to contribute to Kansas Universal Service Fund (KUSF) did not require Commission "regulation" or exercise of "jurisdiction" over wireless service providers in violation of statute excluding radio common carriers from Commission's jurisdiction and regulation; (2) parties' different opinions of what concept of "revenue neutrality" required in Act provisions governing reduction of incumbent telephone local exchange carrier (LEC) intrastate access rates and carrier lost revenue recovery did not render Act unconstitutionally vague; (3) contribution to Fund which Commission required intrastate telecommunications services providers to make as mandated by Act was not "tax" and, thus, Act did not improperly delegate legislature's taxing authority to Commission without constitutional authorization; (4) terms "revenue neutral" and "equitable and nondiscriminatory" in Act section governing Commission's establishment and administration of Fund were not impermissibly vague so as to constitute unlawful delegation of legislative authority; (5) in establishing reduction in carriers' intrastate access rates and requiring other telecommunications services providers to reimburse carriers for revenue loss, orders were not supported by substantial competent evidence and were unreasonable, arbitrary, and capricious; and (6) in determining amount to be paid carriers from Fund, orders were inconsistent with Federal Telecommunications Act provision requiring states to ensure that services related to universal service bore no more than reasonable share of common costs.

Reversed and remanded.

[1] TELECOMMUNICATIONS ⚷335
372k335
Petition for reconsideration of Kansas Corporation Commission (KCC) order implementing Kansas Telecommunications Act raised issues with sufficient specificity to meet statutory requirements for preservation of issues for appeal; issues as stated in petition were sufficiently specific to apprise Commission and other parties of arguments being made and of manner in which order was claimed to be erroneous or unlawful. K.S.A. 66-118b, 66-2001 et seq., 77-529(a).

[2] PUBLIC UTILITIES ⚷167
317Ak167
Purpose of statutory requirement that matters be raised in petition for reconsideration of Kansas Corporation Commission (KCC) order to be preserved for appeal is to inform Commission and other parties where mistakes of law and fact were made in order. K.S.A. 66-118b, 77-529(a).

[3] PUBLIC UTILITIES ⚷194
317Ak194
General or mere allegation of unlawfulness or unreasonableness in petition for reconsideration of Kansas Corporation Commission (KCC) order is insufficient to preserve issue for judicial review.

K.S.A. 66-118b, 77-529(a).

[4] PUBLIC UTILITIES ⚷194
317Ak194
To preserve issues for appeal, petition for reconsideration of Kansas Corporation Commission (KCC) order must be sufficiently specific to inform Commission and other parties where mistakes of law and fact were made in order and of manner in which order is claimed to be erroneous or unlawful. K.S.A. 66-118b, 77-529(a).

[5] TELECOMMUNICATIONS ⚷341
372k341
In petition for reconsideration of Kansas Corporation Commission (KCC) order implementing Kansas Telecommunications Act, allegation that order "is not based on substantial competent evidence, fails to provide adequate findings and is unlawful" lacked specificity necessary to preserve issue for appeal. K.S.A. 66-118b, 66-2001 et seq., 77-529(a).

[6] TELECOMMUNICATIONS ⚷341
372k341
Issue raised in petition for reconsideration of Kansas Corporation Commission (KCC) order implementing Kansas Telecommunications Act, but which was not briefed on appeal, would be deemed waived or abandoned on appeal of order. K.S.A. 66-118b, 66-2001 et seq., 77-529(a).

[7] TELECOMMUNICATIONS ⚷343
372k343
On appeal from Kansas Corporation Commission (KCC) order implementing Kansas Telecommunications Act, Court of Appeals would not remand for reconsideration issues properly presented in petition for reconsideration of order but not addressed by Commission, as issues either made constitutional claims or presented matters requiring judicial determination. K.S.A. 66-118b, 66- 2001 et seq.

[8] TELECOMMUNICATIONS ⚷267
372k267
Federal Telecommunications Act is historic legislation intended to deregulate telecommunications industry, open local and long-distance markets to competition, and ensure universal telephone service for all citizens at affordable rates. Telecommunications Act of 1996, § 1 et seq., 110 Stat. 56.

[8] TELECOMMUNICATIONS ⚷301
372k301
Federal Telecommunications Act is historic legislation intended to deregulate telecommunications industry, open local and long-distance markets to competition, and ensure universal telephone service for all citizens at affordable rates. Telecommunications Act of 1996, § 1 et seq., 110 Stat. 56.

[9] TELECOMMUNICATIONS ⚷461.5
372k461.5
Kansas Telecommunications Act provision mandating that Kansas Corporation Commission (KCC) require intrastate telecommunications services providers to contribute to Kansas Universal Service Fund (KUSF) did not require Commission "regulation" or exercise of "jurisdiction" over wireless service providers in violation of statute excluding radio common carriers from Commission's jurisdiction and regulation; requirement of contribution to fund was not regulation of rates or market entry, but rather, was simply additional cost of doing business. K.S.A. 66-1,143(b), 66-2008(b).
See publication Words and Phrases for other judicial constructions and definitions.

[10] TELECOMMUNICATIONS ⚷307.1
372k307.1
Requiring telecommunications carrier that provides intrastate services to contribute to Kansas Universal Service Fund does not constitute "regulation" or exercise of "jurisdiction" by Kansas Corporation Commission (KCC). K.S.A. 66-1,143(b), 66-2008(b).
See publication Words and Phrases for other judicial constructions and definitions.

[11] STATUTES ⚷176
361k176
Interpretation of statute was question of law.

[12] CONSTITUTIONAL LAW ⚷48(1)
92k48(1)
Constitutionality of statute is presumed, and all doubts must be resolved in favor of its validity.

[12] CONSTITUTIONAL LAW ⚷48(3)
92k48(3)
Constitutionality of statute is presumed, and all

doubts must be resolved in favor of its validity.

[13] CONSTITUTIONAL LAW ⚬=298(4)
92k298(4)
Fact that parties had different opinions of what concept of "revenue neutrality" required as used in Kansas Telecommunications Act provisions governing reduction of intrastate switched access rates and recovery of incumbent telephone local exchange carrier (LEC) revenues lost due to such reduction did not render Act unconstitutionally vague. K.S.A. 66-2005(c), 66-2008(a).

[13] TELECOMMUNICATIONS ⚬=301
372k301
Fact that parties had different opinions of what concept of "revenue neutrality" required as used in Kansas Telecommunications Act provisions governing reduction of intrastate switched access rates and recovery of incumbent telephone local exchange carrier (LEC) revenues lost due to such reduction did not render Act unconstitutionally vague. K.S.A. 66-2005(c), 66-2008(a).

[14] CONSTITUTIONAL LAW ⚬=62(14)
92k62(14)
Contribution to Kansas Universal Service Fund (KUSF) which Kansas Corporation Commission (KCC) required intrastate telecommunications services providers to make as mandated by Kansas Telecommunications Act was not "tax" and, thus, Act did not improperly delegate legislature's taxing authority to Commission without constitutional authorization; Fund was not for benefit of general public, but rather, monies from fund were to be distributed only to certain qualifying members of telecommunications industry. K.S.A. 66-2008(b, c).

[14] TELECOMMUNICATIONS ⚬=301
372k301
Contribution to Kansas Universal Service Fund (KUSF) which Kansas Corporation Commission (KCC) required intrastate telecommunications services providers to make as mandated by Kansas Telecommunications Act was not "tax" and, thus, Act did not improperly delegate legislature's taxing authority to Commission without constitutional authorization; Fund was not for benefit of general public, but rather, monies from fund were to be distributed only to certain qualifying members of telecommunications industry. K.S.A. 66-2008(b, c).

[15] TAXATION ⚬=1
371k1
"Tax" is forced contribution to raise revenue for maintenance of governmental services offered to the general public.
See publication Words and Phrases for other judicial constructions and definitions.

[16] CONSTITUTIONAL LAW ⚬=62(14)
92k62(14)
Terms "revenue neutral" and "equitable and nondiscriminatory" in Kansas Telecommunications Act section governing Kansas Corporation Commission's (KCC) establishment and administration of Kansas Universal Service Fund (KUSF) were not impermissibly vague so as to constitute unlawful delegation of legislative authority; term "revenue neutral" was commonly used in regulatory arena and had recognized meaning, and words "equitable and nondiscriminatory" had understandable meaning that gave Commission adequate direction. K.S.A. 66-2008.

[16] TELECOMMUNICATIONS ⚬=301
372k301
Terms "revenue neutral" and "equitable and nondiscriminatory" in Kansas Telecommunications Act section governing Kansas Corporation Commission's (KCC) establishment and administration of Kansas Universal Service Fund (KUSF) were not impermissibly vague so as to constitute unlawful delegation of legislative authority; term "revenue neutral" was commonly used in regulatory arena and had recognized meaning, and words "equitable and nondiscriminatory" had understandable meaning that gave Commission adequate direction. K.S.A. 66-2008.

[17] CONSTITUTIONAL LAW ⚬=62(2)
92k62(2)
Statute delegating legislative authority must fix reasonable and definite standards to establish manner and exercise of power delegated; however, legislature may enact statutes in broad outline and authorize administrative agency to fill in details.

[18] CONSTITUTIONAL LAW ⚬=62(2)
92k62(2)

In testing statute delegating legislative authority for adequacy of standards for exercising authority, character of administrative agency involved is important; what constitutes sufficient standard varies somewhat according to complexity of areas sought to be regulated.

[19] CONSTITUTIONAL LAW ⚟60
92k60
In testing statute delegating legislative authority for adequacy of standards for exercising authority, standards may be inferred from statutory purpose.

[20] CONSTITUTIONAL LAW ⚟62(5.1)
92k62(5.1)
Great leeway should be afforded legislature in setting standards for administrative agencies in exercising delegated legislative authority in areas of complex social and economic problems.

[21] STATUTES ⚟192
361k192
Technical terms and phrases, and other words and phrases in statute that have acquired peculiar and appropriate meaning, are construed according to those meanings.

[22] TELECOMMUNICATIONS ⚟301
372k301
Kansas Corporation Commission (KCC) orders which implemented Kansas Telecommunications Act, establishing reduction in intrastate access rates of incumbent telephone local exchange carriers (LEC) and requiring other intrastate telecommunications services providers to contribute to Kansas Universal Service Fund (KUSF) to reimburse carriers for resulting revenue loss, were not supported by substantial competent evidence and were unreasonable, arbitrary, and capricious; Act's concept of revenue neutrality and its prohibition of Commission review of carriers' initial prices under Act were inconsistent with Federal Telecommunications Act and prevented Commission from performing its regulatory responsibilities in general and under Federal and Kansas Acts. Telecommunications Act of 1996, 47 U.S.C.A. § 254(b)(4, 5), (f, i, k); K.S.A. 66-1,187 et seq., 66-2005(b, c, u), 66-2008(a, b), 77-621(c)(7, 8).

[23] TELECOMMUNICATIONS ⚟301
372k301
Concept of "revenue neutrality" in Kansas Telecommunications Act provisions governing reduction of intrastate access rates by incumbent telephone local exchange carriers (LEC) and reimbursement of resulting revenue loss by other telecommunications services providers was inconsistent with provisions of Federal Telecommunications Act and with public policy of state as expressed in Kansas Act. Telecommunications Act of 1996, 47 U.S.C.A. § 254(b)(4, 5), (f, i); K.S.A. 66-2001, 66-2005(c), 66-2008(a).

[24] TELECOMMUNICATIONS ⚟333
372k333
To ensure that all people of state had access to universal telecommunications service at affordable rates according to purpose of Kansas Universal Service Fund (KUSF), Kansas Corporation Commission (KCC) had to be able to perform audit or earnings review of incumbent telephone local exchange carriers (LEC) to determine cost of providing universal service and affordable rate for universal service. Telecommunications Act of 1996, 47 U.S.C.A. § 254(b)(4, 5), (f, i, k); K.S.A. 66-2001(a), 66-2005(c, u), 66-2008, 66- 2008(a, b).

[25] TELECOMMUNICATIONS ⚟307.1
372k307.1
Purpose of Kansas Universal Service Fund (KUSF) established pursuant to Kansas Telecommunications Act is to ensure that all people of state have access to universal service at affordable rates. K.S.A. 66-2001(a), 66-2008.

[26] TELECOMMUNICATIONS ⚟307.1
372k307.1
Size of Kansas Universal Service Fund (KUSF) established pursuant to Kansas Telecommunications Act must be based on concept of universal service and cost of providing universal service. K.S.A. 66-2005(c), 66-2008, 66- 2008(a, b).

[27] TELECOMMUNICATIONS ⚟333
372k333
Kansas Telecommunications Act's prohibition against audits of incumbent telephone local exchange carriers' (LEC) initial rates under Act and its concept of revenue neutrality in reduction of carriers' intrastate access rates were inconsistent with Kansas Corporation Commission's (KCC) statutory obligation to ensure just and reasonable rates and charges for consumers. K.S.A. 66-1,187